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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/739,642	12/20/2000	Tsuyoshi Kayanoki	Q62426	4749

7590

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EXAMINER

KRUER, KEVIN R

ART UNIT

PAPER NUMBER

1773

DATE MAILED: 12/26/2002

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/739,642

Applicant(s)

KAYANOKI ET AL.

Examiner

Kevin R Kruer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Claims 19-25 are withdrawn from further consideration pursuant to 37 CFR

1.142(b) as being drawn to a nonelected process of making, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "center cluster" is indefinite. Specifically, the term is not defined in the specification or in the prior art in such a way that one of ordinary skill in the art would understand the metes and bounds of the term.

3. Claims 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recite the limitation "the olefin resin." There is insufficient antecedent basis for this limitation in the claim. Specifically, it is not clear whether "the olefin resin" refers to (i) or (ii).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 2, 3, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Yazaki et al (US 4,256,687). In example 1, Yazaki teaches a molded isotactic polypropylene having a surface roughness of 0.3um and a thickness of 0.6mm.

6. Claims 2-5 and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Tsunashima et al (US 4,410,582). Tsunashima teaches a three-layered laminated film comprising a center layer of crystalline low molecular weight polyolefin, and two surface layers disposed on both sides of the center line comprising a crystalline polyolefin (abstract). The laminate has a thickness of 6-130um (col 3, lines 1-18). The surface layer may have a surface roughness below 3um (col 7, lines 20+) and may comprise propylene homopolymers (col 4, lines 18+). For example, the surface layer may comprise an isotactic polypropylene having an isotactic index of 97.2% (col 1, line 46+).

The films of Tsunashima are not molded. However, the courts have held that a making a product does not patentably distinguish a product from the prior art unless it can be shown that the method of making the product inherently results in a materially different product. In the present application, no such showing has been made.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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8. Claims 2-4 and 12-14 are rejected under 35 U.S.C. 102(a) as being anticipated by Nagai et al (US 6,106,933). Nagai teaches a gas barrier biaxially oriented polypropylene film having a base layer of a polypropylene polymers and skin layer(s) comprising a polyolefin resin (abstract). The base comprises a crystalline isotactic polypropylene having an isotactic index of 95-99% (col 3, lines 28-34) and preferably is a homopolymer (col 3, lines 22+). After orientation, the skin layer is crystallized (col 4, line 67). The average surface roughness of the polyolefin resin layer is 0.04-0.08um (col 5, lines 40+).

The films of Nagai are not molded. However, the courts have held that a making a product does not patentably distinguish a product from the prior art unless it can be shown that the method of making the product inherently results in a materially different product. In the present application, no such showing has been made.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2, 3, 5, 12, 13, 15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacoby et al (US 5,310,584) in view of Fujimori et al (US 4,623,190). Jacoby teaches a thermoformable polypropylene sheet (abstract) with a thickness of 0.25mm or greater (col 9, lines 53+). The polypropylene may be a homopolymer (col 6, line 25). Said sheet may be utilized in a variety of laminates (col 9,

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lines 26+), including laminates with crystalline resins (col 10, line 68). The laminate is useful in applications including automotive applications such as bumpers, door panel inserts, and glove box doors (col 12, lines 46+).

Jacoby does not teach the claimed surface roughness. However, Fujimori teaches a molded composition useful for making fenders (col 2, lines 49+). Fujimori teaches that the molding should have a surface roughness of about 0.3um or less (col 2, lines 50+). Thus, it would have been obvious to one of ordinary skill in the art make the bumper taught in Jacoby with the surface roughness or less than 0.3um because Fujimori teaches that such surface roughness are desirable in the field.

With respect to claim 18, it has been held that the manner in which a product is intended to be employed does not patentably distinguish the claimed product from the prior art satisfying the claimed structural limitations.

10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yazaki et al (US 4,256,687) as applied to claims 2, 3, and 5 above, and further in view of Osborn et al (US 3,852,237). Yazaki is relied upon as above. Specifically, Yazaki teaches a molded polypropylene that may be nucleated (col 6, line 24+). The sheet should have excellent transparency (col 6, lines 39+). Yazaki does not teach that the molded article should have the claimed haze. However, Osborn teaches a combination of agents that markedly improves the clarity of nucleated polyolefins (abstract). Thus, it would have been obvious to one of ordinary skill in the art to utilize the additives taught in Osborn in the article taught in Yazaki in order to reduce the haze of the article taught in Yazaki because Yazaki teaches that the article is desirably transparent.

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With respect to the surface haze, the examiner takes the position that the surface haze is inherent to the surface roughness taught in Yazaki. The examiner takes this position because it is known in the art that the surface haze is primarily a function of surface roughness.

11. Claims 6 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsunashima et al (US 4,410,582) as applied to claims 2-5 and 12-15 above, and further in view of Osborn et al (US 3,852,237). Tsunashima is relied upon as above.

Specifically, Tsunashima teaches a nucleated polypropylene article. The article should have low haze (col 11, lines 25+), but does not teach that the article should have the claimed haze. However, Osborn teaches a combination of agents that markedly improves the clarity of nucleated polyolefins (abstract). Thus, it would have been obvious to one of ordinary skill in the art to utilize the additives taught in Osborn in the article taught in Tsunashima in order to reduce the haze of the article taught in Tsunashima because Tsunashima teaches that the article desirably has low haze.

With respect to the surface haze, the examiner takes the position that the surface haze is inherent to the surface roughness taught in Yazaki. The examiner takes this position because it is known in the art that the surface haze is primarily a function of surface roughness.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R Kruer whose telephone number is 703-305-

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0025. The examiner can normally be reached on Monday-Friday from 7:00a.m. to 4:00p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau, can be reached on (703) 308-2367. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

K-RK-

KRK



Paul Thibodeau
Supervisory Patent Examiner
Technology Center 1700